

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Eure Family Limited Partnership)	File No. EB-01-NF-201
)	
Owner of Antenna Structure)	NAL/Acct. No. 200132640006
Registration # 1018162)	
Mathews County, Virginia)	FRN 0005-0271-72

FORFEITURE ORDER

Adopted: December 3, 2001**Released: December 5, 2001**

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of eight thousand dollars (\$8,000) to Eure Family Limited Partnership (“Eure”) for willful violation of Section 17.51(a) of the Commission’s Rules (“Rules”).¹ The noted violation involves Eure’s failure to exhibit red obstruction lighting on its Mathews County, Virginia antenna structure between sunset and sunrise.

2. On August 16, 2001, the Commission’s Norfolk, Virginia, Resident Agent Office (“Norfolk Office”) issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) to Eure for a forfeiture in the amount of eight thousand dollars (\$8,000).² Eure filed a response to the NAL on September 17, 2001.

II. BACKGROUND

3. Eure owns an antenna structure in Mathews County, Virginia, with antenna structure registration (“ASR”) number 1018162. The ASR for the Mathews County tower indicates that red obstruction lighting is required between sunset and sunrise. On June 8, 2001, a resident of Harfield, Virginia contacted the FCC and reported that he had observed the Mathews County tower without its top beacon lit at night. On June 9, 2001, after sunset, an FCC agent inspected the structure and observed that the top beacon was not lit. Another FCC agent then contacted the Federal Aviation Administration’s (“FAA”) Leesburg, Virginia Flight Service Station, which advised the agent that there was no Notice to Airmen (“NOTAM”)³ in effect for the Mathews County tower. At the FCC agent’s request, the FAA issued a NOTAM for the Mathews County tower.

¹ 47 C.F.R. § 17.51(a).

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200132640006 (Enf. Bur., Norfolk Office, released August 16, 2001).

³ Tower owners are required to report any obstruction lighting outages to the nearest Flight Service Station or FAA office immediately if the outage is not corrected within 30 minutes. See 47 C.F.R. § 17.48(a). The FAA then

4. On July 2, 2001, the Norfolk Office issued a Notice of Violation ("NOV") to Eure⁴ for failing to exhibit red obstruction lighting on the Mathews County tower between sunset and sunrise in violation of Section 17.51(a) of the Rules. Eure filed a response to the NOV on July 20, 2001. In this response, Eure stated that it had operated the tower as an antenna site for WXEZ-FM, Yorktown, Virginia, and that it had monitored the tower lights using a telephone dial-up device that was programmed to notify WXEZ's engineer of any lighting outages until it sold WXEZ in October 2000. Eure further stated that by lease agreement dated January 5, 1999, it leased space on the Mathews County tower to Bullseye Broadcasting, LLC ("Bullseye"), licensee of WSRV, Deltaville, Virginia, and that the terms of the lease agreement required Bullseye to monitor the tower lights and notify Eure of any lighting failures. Eure provided a letter from a principal of Bullseye, who stated that Bullseye failed to notify Eure of the malfunctioning beacon because he was unaware that the lease agreement obligated Bullseye to monitor the tower lights. Bullseye's principal also stated that the dial-up device used to monitor the tower lighting was never reprogrammed to notify Bullseye's engineer of any lighting outages after Eure sold WXEZ in October 2000. Finally, Eure indicated that the malfunctioning beacon had been repaired and that the dial-up device had recently been reprogrammed to notify Bullseye's engineer of any lighting outages.

5. On August 16, 2001, the Norfolk Office issued an *NAL* for a forfeiture in the amount of \$8,000 to Eure for failure to exhibit red obstruction lighting on the Mathews County tower between sunset and sunrise in violation of Section 17.51(a) of the Rules. The *NAL* noted that the base forfeiture amount for tower lighting violations is \$10,000,⁵ but reduced the forfeiture amount to \$8,000 based on Eure's history of compliance with the Commission's rules. Eure filed a response to the *NAL* on September 17, 2001. In this response, Eure does not dispute that the violation occurred. However, Eure argues that the *NAL* should be vacated because the Norfolk Office failed to consider Eure's explanation for the violation set forth in its response to the NOV. In addition, Eure argues that the *NAL* should be vacated because it is not supported by probative evidence of a "willful or repeated" violation. Eure asserts that the violation was not willful because it had a contract with a third party who was responsible for monitoring the tower lights and the third party failed to notify it of the extinguished beacon. Eure asserts that the violation was not repeated because the FCC agent observed the violation on only one day, June 9, 2001.

III. DISCUSSION

6. The forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),⁶ Section 1.80 of the Rules,⁷ and *The Commission's*

issues a NOTAM, a written advisory to aircraft pilots regarding a hazard or potential hazard of which they should be aware. A NOTAM expires automatically after 15 days, unless the tower owner calls the FAA to extend the NOTAM.

⁴ The Norfolk Office issued the NOV to Eure Communications, Inc. because FCC records incorrectly listed Eure Communications, Inc. as the owner of the Mathews County tower. The response to the NOV, which was signed by C. Wesley Eure on behalf of both Eure Communications, Inc. and Eure Family Limited Partnership, indicated that ownership of the tower had been transferred to Eure Family Limited Partnership. On August 8, 2001, the Norfolk Office confirmed that the FCC records had been updated to list Eure Family Limited Partnership as the owner of the Mathews County tower.

⁵ See 47 C.F.R. § 1.80(b)(4).

⁶ 47 U.S.C. § 503(b).

Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (“*Policy Statement*”). In examining Eure’s response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁸

7. Section 17.51(a) of the Rules provides that all red obstruction lighting must be exhibited from sunset to sunrise unless otherwise specified in the ASR. Eure does not dispute that the red obstruction lighting on the Mathews County tower was not lit after sunset on June 9, 2001. Thus, Eure violated Section 17.51(a) of the Rules.

8. We reject Eure’s argument that the *NAL* should be vacated because the Norfolk Office did not consider the explanation for the violation set forth in its response to the NOV. Although the *NAL* did not discuss the explanation, the Norfolk Office fully considered Eure’s response to the NOV in determining that an *NAL* was appropriate under the circumstances of this case. Furthermore, as discussed below, we have also reviewed Eure’s explanation for the violation and find that it does not warrant rescission or mitigation of the forfeiture.

9. Eure states that pursuant to a lease agreement dated January 5, 1999, a third party, Bullseye, was required to monitor the lights on the Mathews County tower and notify Eure of any lighting failures. However, the Commission has long held that licensees and Commission regulatees are responsible for the acts and omissions of their employees and independent contractors. *See Netcom Technologies, Inc.*, 16 FCC Rcd 9524, 9526 (Enf. Bur. 2001); *MTD, Inc.*, 6 FCC Rcd 34, 35 (1991); *Wagenvoord Broadcasting Co.*, 35 FCC 2d 361 (1972). Moreover, the Commission has made clear that antenna structure owners will have primary responsibility for maintaining the prescribed painting and lighting on their antenna structures and will not be permitted to circumvent this responsibility by entering into contractual arrangements. *See Streamlining the Commission’s Antenna Structure Clearance Procedure and Revision of Part 17 of the Commission’s Rules Concerning Construction, Marking and Lighting Antenna Structures*, 11 FCC Rcd 4272, 4294-96 (1995) (“*Streamlining*”); *see also* 47 C.F.R. § 17.6(a). In *Streamlining*, the Commission stated that “[n]otwithstanding private contractual arrangements ... structure owners, are and will continue to be, held responsible for maintaining the prescribed structure painting and/or lighting. Any resolution concerning a failure to perform pursuant to a private contractual arrangement, including appropriate remedies or damages, are matters to be resolved in a local forum.” 11 FCC Rcd at 4296. Thus, we conclude that Eure’s lease agreement with Bullseye did not relieve Eure of its primary responsibility to maintain the lighting on the Mathews County tower and that Eure is responsible for any failure by Bullseye to maintain the tower lighting.

10. We also conclude that the failure to exhibit red obstruction lighting on the Mathews County tower after sunset on June 9, 2001 was a “willful” violation of Section 17.51(a) of the Rules. Section 312(f)(1) of the Act provides that “the term ‘willful,’ when used with reference to the commission or omission of any act, means the conscious or deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission”⁹ This definition applies to the term “willful” as used in Section 503(b) of the Act. *See Southern*

⁷ 47 C.F.R. § 1.80.

⁸ 47 U.S.C. § 503(b)(2)(D).

⁹ 47 U.S.C. § 312(f)(1).

California Broadcasting Co., 6 FCC Rcd 4387 (1991). Moreover, a violation resulting from an inadvertent mistake or a failure to become familiar with the FCC's requirements is considered a willful violation. See *PBJ Communications of Virginia, Inc.*, 7 FCC Rcd 2088 (1992); *Standard Communications Corp.*, 1 FCC Rcd 358 (1986); *Triad Broadcasting Co., Inc.*, 96 FCC 2d 1235, 1242 (1984). The violation in this case was willful because Bullseye should have known about the malfunctioning top beacon. Section 17.47(a) of the Rules requires tower owners to ensure that tower lights are functioning properly by making daily visual observation of the lights, by making daily visual observations of a properly maintained indicator designed to register any failure of such lights, or by properly maintaining an automatic alarm system designed to detect any failure of such lights and provide notification of such failure to the owner.¹⁰ In addition, Section 17.47(b) of the Rules requires tower owners to inspect at least every three months all automatic or mechanical control devices, indicators and alarm systems associated with the tower lighting to ensure that such apparatus is functioning properly.¹¹ Based on the record before us, it appears that Bullseye never reprogrammed the dial-up device used to monitor the Mathews County tower lighting after Eure sold its FM station in October 2000 and did not inspect the device even once between October 2000 and June 9, 2001 to ensure that it was functioning properly. As noted above, Eure is responsible for the acts and omissions of its contractor, Bullseye. Therefore, Eure's violation of Section 17.51(a) was willful. Because we conclude that Eure's violation was willful, we need not address its argument that the violation was not repeated.

11. We have examined Eure's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Policy Statement* as well. As a result of our review, we conclude that Eure has failed to provide sufficient justification for canceling or mitigating the proposed forfeiture amount. Therefore, we affirm the forfeiture of eight thousand dollars (\$8,000).

IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹² Eure Family Limited Partnership, **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of eight thousand dollars (\$8,000) for failure to exhibit red obstruction lighting on its antenna structure between sunset and sunrise in willful violation of Section 17.51(a) of the Rules.

13. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹³ Payment may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should reference *NAL*/Acct. No. 200132640006 and FRN

¹⁰ 47 C.F.R. § 17.47(a).

¹¹ 47 C.F.R. § 17.47(b).

¹² 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

¹³ 47 U.S.C. § 504(a).

0005-0271-72. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁴

14. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by Certified Mail Return Receipt Requested to Eure Family Limited Partnership, 4026 George Washington Hwy., Yorktown, Virginia 23692, and to its counsel, Gary S. Smithwick, Esq., Smithwick & Belendiuk, P.C., 5028 Wisconsin Avenue, N.W., Suite 301, Washington, D.C. 20016.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

¹⁴ See 47 C.F.R. § 1.1914.